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AIRTOUCH™
Communications
The new name for PacTel

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April 4, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: PR Docket No. 94-105; Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates

Dear Mr. Caton:

The attached material was distributed on behalf of AirTouch Communications. Please associate this material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Q. Abernathy

Attachment

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EX PARTE

Michael Wack
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554

Re: PR Docket No. 94-105

Dear Mr. Michael Wack:

On March 27, 1995 the California Public Utilities Commission ("CPUC") made an ex parte submission enclosing copies of CPUC Decisions 95-03-042 and 95-03-043 ("the Decisions") in support of its petition to continue and augment rate regulation of cellular service in California (" CPUC Petition"). AirTouch Communications hereby submits a brief analysis of the Decisions.

The CPUC's ex parte submission confirms that the CPUC is improperly imposing new rate regulation prior to receiving authorization from this Commission. The CPUC's Petition misleadingly implied that it simply sought to continue regulating those aspects of cellular service that it was regulating as of June 1, 1993. See CPUC Petition at 1. However, the CPUC's ex parte submission confirms that the CPUC "adopted the cellular rate unbundling program" on August 3rd, just days prior to filing its petition, and that the CPUC is only now taking "further steps" to implement unbundling. See letter of Ellen LeVine to William Caton dated March 27, 1995. The CPUC's attempt to implement such regulation is contrary to the mandate of the Communications Act granting a petitioning state only limited authority to continue "existing regulation" in effect as of June 1, 1993 until this Commission acts on the state's petition. See, e.g., Section 332(c)(3)(B) of the Communications Act and AirTouch Opposition (September 19, 1994) at 16-18.

In the Decisions, the CPUC has ordered the carriers, after receipt of a bona fide engineering plan from the resellers demonstrating switch compatibility, to file an advice letter with new discrete rate elements, including a separate unbundled

rate element reflecting LEC interconnection charges that would be avoided by the reseller switch. CPUC Decision 95-03-042, Conclusions of Law 2 and 4, Ordering ¶ 11; CPUC Decision 95-03-043, Ordering ¶ 1(g). The quantification of new unbundled rates would also take into account the reasonable additional costs and charges attributable to the services that the cellular carriers will provide to the resellers. CPUC Decision 95-03-042, Conclusion of Law 1. As a result, the Decisions require the development of new rates for new segregated services that the carriers have never offered before, and thus are plainly contrary to the Communications Act. The CPUC is unlawfully attempting to enforce its proposed regulatory scheme before this Commission has granted it authority to do so.

Moreover, rather than supporting the CPUC's case, the Decisions undermine the claim that rates in California are too high and thus warrant continued regulatory intervention. CPUC Decision 95-03-042 provides that "[u]nbundled rates should be just and reasonable" and thus are to be limited by the existing rate band caps on per minute usage rates and access charges. CPUC Decision 95-03-042, Conclusion of Law 5, Ordering ¶¶ 11 and 12. By limiting the unbundled rates to existing rate band caps, the CPUC has implicitly acknowledged that the rates it claims are too high are in fact "just and reasonable."

The Decisions also contradict the CPUC's representations regarding the efficacy of its new regulation. The CPUC claims that its new regulation will "introduce effective competition" into the cellular marketplace. Letter of Ellen LeVine to William Caton dated March 27, 1995. The Decisions contradict this claim by showing that the economic and technical feasibility of the reseller switch, the centerpiece of the CPUC's new regulation, is uncertain. Rather than holding hearings to test its new regulations, as requested by the parties, the CPUC has delegated to the resellers all responsibility for implementing the regulations it claims are crucial to protecting consumers. To this end, the CPUC has ordered the carriers to produce data to allow the resellers "to make an informed judgment of the technical feasibility and cost effectiveness of implementing interconnection." CPUC Decision 95-03-042, Ordering ¶ 6 (emphasis added).

The CPUC cannot even claim that its new regulation is feasible, much less necessary to ensure just and reasonable rates. To the contrary, the CPUC's new regulation continues its pattern of protecting inefficient competitors, rather than consumers. The CPUC's unbundling order neither reduces costs, nor increases capacity, and thus cannot lead to lower prices for consumers.

This letter will be included in the record of this proceeding in accordance with the Commission's rules concerning ex parte communications.

Very truly yours,

Kathleen Q. Abernathy

cc: Ruth Milkman
Rudy Baca
Lisa Smith
David Siddall